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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

J.F., a minor, by and through her
Guardian Ad Litem, LIZ FRANCO, et
al.,

Plaintiffs,

vs.

CITY OF WOODLAKE, et al.,

Defendants.

Case No. 1:23-CV-01569-JLT-BAM

Honorable Barbara A. McAuliffe

**PLAINTIFFS' NOTICE OF
MOTION AND MOTION TO
AMEND; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF PLAINTIFFS'
MOTION TO AMEND**

[Proposed] Order and Amended
Complaint
filed concurrently herewith

Date: May 23, 2024

Time: 9:00 a.m.

Crtrm.: 8, 6th Floor

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

PLEASE TAKE NOTICE that on May 23, 2024, at 9:00 a.m. or as soon
thereafter as this matter may be heard in Courtroom 8 (on the 6th Floor) of the
above-entitled Court, Plaintiffs will and hereby do move the Court for leave to file a
First Amended Complaint in Case No. 1:23-CV-01569-JLT-BAM. Plaintiffs

1 make this Motion under Federal Rule of Civil Procedure 15 on the grounds that
2 justice requires leave to amend.

3 This motion is made after meeting and conferring with defense counsel in
4 which they indicated they could not stipulate to amending the complaint, in part
5 because of the punitive damages be sought against the shooting officers. This
6 Motion is based on this Notice of Motion and the separate Memorandum of Points
7 filed concurrently herewith, the records and files of this Court, and all other matters
8 of which the Court may take judicial notice.

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11 DATED: April 18, 2024

LAW OFFICES OF DALE K. GALIPO

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14 Bv. /s/ Eric Valenzuela
ERIC VALENZUELA
15 Attorney for Plaintiffs
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **Introduction**

3 Plaintiffs hereby seek leave of Court to file a First Amended Complaint to
4 conform their allegations and claims for relief with additional information that
5 recently was discovered. Plaintiffs have learned, after obtaining supplemental
6 disclosures from Defendant, that Plaintiffs have a basis for naming the two
7 individual officers involved in the incident that resulted in the death of the decedent,
8 Victor Melendez. All of this information was previously unavailable to Plaintiffs
9 but was in the possession, custody, or control of Defendant.

10 This case arises out of the fatal shooting of the decedent, Victor Melendez, by
11 Officers Chris Kaious and Juan Gonzales of the City of Woodlake Police
12 Department. The Defendants only recently provided supplemental disclosures.
13 Plaintiffs’ motion for leave to amend their complaint should be granted because
14 justice so requires.

15 The operative pleading is currently Plaintiff’s Complaint for Damages, which
16 was filed on November 7, 2023, and asserts six claims: (1) Unreasonable Search and
17 Seizure—Excessive Force (42 U.S.C. § 1983); (2) Unreasonable Search and
18 Seizure—Denial of Medical Care (42 U.S.C. § 1983); (3) Substantive Due
19 Process—(42 U.S.C. § 1983); (4) Battery (Wrongful Death); (5) Negligence
20 (Wrongful Death) and (6) Violation of the Bane Act (Cal. Civil Code § 52.1).
21 Plaintiffs’ Complaint for Damages is replete with allegations against Does 1-10.
22 Plaintiffs’ motion for leave to amend in order to name two (2) Doe Defendant
23 should be granted because justice so requires.

24 **Legal Standard**

25 Under Rule 15, “leave shall be freely given when justice so requires.” FED.
26 R. CIV. P. 15(a). This policy is applied with “extreme liberality.” *Eminence*
27 *Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003); *Morongo Band*
28 *of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990). Denial of a motion

1 to amend is appropriate only when the opposing party makes a showing of undue
2 prejudice, bad faith, or dilatory motive on the part of the moving party. *Foman v.*
3 *Davis*, 371 U.S. 178, 182 (1962); *Martinez v. City of Newport Beach*, 125 F.3d 777,
4 785 (9th Cir. 1997).

5 **Argument**

6 **PLAINTIFFS SATISFY THE LIBERAL AMENDMENT STANDARD**
7 **OF RULE 15**

8 Plaintiffs' proposed amendment easily satisfies Rule 15's liberal policy
9 favoring amendment. Plaintiffs seek leave to substitute Officers Chris Kaious and
10 Juan Gonzales in place of Doe Defendants 1-2. Plaintiffs reason for seeking relief is
11 that, after recently obtaining supplemental disclosures in discovery from Defendant,
12 Plaintiffs have learned that Officers Kaious and Gonzales were the shooting officers
13 who used excessive deadly force against the Decedent and violated his
14 constitutional and state rights, including the rights of the Plaintiffs. Justice so
15 requires that Plaintiffs be permitted to bring their claims against the proper
16 Defendants.

17 Further, Defendants will suffer no prejudice if the Court grants Plaintiffs'
18 leave to amend their Complaint. The information provided in Defendant's
19 supplemental disclosures shows that Defendant is well informed of the identity of
20 the officers involved during the incident which occurred on December 17, 2022, and
21 the defense has had significant time since then to obtain the relevant factual
22 information underlying the incident. Moreover, discovery is only in its initial
23 stages, and Plaintiffs anticipate that both sides will continue to propound written
24 discovery and take depositions of the involved parties.

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Conclusion

For the foregoing reasons, Plaintiffs respectfully request that the Court grant them leave to file a First Amended Complaint to substitute Officers Chris Kaious and Juan Gonzales in place of Doe Defendants 1-2.

DATED: April 18, 2024

LAW OFFICES OF DALE K. GALIPO

Bv /s/ Eric Valenzuela
ERIC VALENZUELA
Attorney for Plaintiffs